



24 CFR Part 58.5(e)

Endangered Species Act

Outline

- **Background**
- **ESA Section 7 Protocol**
- **Documentation for the ERR**



A close-up, macro photograph of a green leaf with water droplets, serving as a background. The leaf's veins are clearly visible, and the water droplets are scattered across its surface. The word "BACKGROUND" is overlaid in white, bold, serif capital letters.

BACKGROUND

Section 7 of Endangered Species Act

- Congress passed Endangered Species Act of 1973.
- Section 7 of ESA outlines Federal agency responsibilities
- Section 7 requires Federal agencies to use their authorities to further the conservation of listed species
- Responsible Entity compliance required by 24 CFR Part 58.5(e)



Section 7 of Endangered Species Act

- Section 7 requires Federal agencies (Responsible Entities) to consult with the Services to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.
 - U.S. Fish and Wildlife Service – terrestrial species
 - NOAA National Marine Fisheries Service – marine species
 - Collectively called “Services”



Region VI Listed Species

- Includes Threatened and Endangered Species as of 4/20/2012
- Texas – 57 animals ; 28 plants
- New Mexico – 29 animals; 13 plants
- Oklahoma – 16 animals; 1 plants
- Arkansas – 23 animals; 5 plants
- Louisiana – 19 animals; 3 plants



<http://www.fws.gov/endangered/species/index.html>



ESA SECTION 7 PROTOCOL

Step 1: Determine if Project has the Potential to Affect Listed Species or Critical Habitat

- Types of activities likely to have “No Effect” on listed species or critical habitat...
 - Demolition and construction or placement of a single family residence within a developed lot
 - Rehabilitation or renovation activities associated with existing structures (e.g., houses, buildings), including additional structures attached to or associated with the primary structure



Houston Toad
Bufo Houstonensis
Status: Endangered
TX

Types of activities likely to have “No Effect” on listed species or critical habitat (cont.)

- Acquisition of existing structures (e.g., houses, buildings), including additional structures attached to or associated with the primary structure
- Purchase and placement of playground equipment within existing parks
- Resurfacing, repairing, or maintaining existing streets, sidewalks, curbs, trails, parking lots and/or any other existing paved surfaces where additional ground disturbance, outside of the existing surface is not necessary



Attwater's Greater
Prairie Chicken
*Tympanuchus cupido
attwateri*
Status: Endangered
TX

Making a “No Effect” Finding Based on Project Type



- The RE Determines whether the proposed project has the potential to alter or destroy habitat or could affect federally protected species.
- Is this the type of project or action that could realistically have an impact on T&E species?
- If no, then the project is likely to have “**No Effect**” on federally protected species and critical habitat.
- Informal consultation with the Services is not necessary.
- RE documents the supporting of the finding of “**No Effect**” with memorandum to the file.

Step 2: Determine Whether there are Listed Species or Critical Habitat Near Project Area

- Use species list at FWS and NMFS websites:
 - <http://www.fws.gov/endangered/species/index.html>
 - <http://www.nmfs.noaa.gov/pr/species/esa/>
- IPAC will provide information about sensitive resources within the vicinity of a proposed project
- FWS IPAC Website under construction:
<http://ecos.fws.gov/ipac/wizard/chooseLocation!prepare.action>
- And FWS and NMFS critical habitat websites:
 - <http://criticalhabitat.fws.gov/criticalhabitat/>
 - <http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>



Arkansas River Shiner
Notropis girardi
Status: Threatened
TX, NM, OK, AR

Making a “No Effect” Finding Based on the Absence of Federally Listed Species or Critical Habitat Near the Project Area

- If no listed species or critical habitat is identified in the project area, THEN
 - The project is likely to have “No Effect” on federally protected species and critical habitat.
 - Informal consultation with the Services is not necessary.
- RE documents the supporting of the finding of “No Effect” with memorandum to the file.



Louisiana Black Bear
Ursus americanus luteolus
Status: Threatened
TX, LA

Step 3: Determining Whether the Project “May Affect” a Listed Species

- If a project is of the type that has the potential to affect a listed species AND there are listed species and critical habitat near the project area, more study is necessary
- A special study must be conducted by a qualified professional to determine the effects of the project on each species and critical habitat.
- Contact resource experts for assistance— USFWS or NMFS



Jaguar

Panthera onca

Status: Endangered

TX, NM

Special Studies

- Biological Surveys
- Biological Evaluation
- Habitat Assessment
- Biological assessment for “major construction activities” that would normally require the preparation of an EIS.
- Must be prepared by a qualified biologist

Possible Outcomes of Special Studies

- May affect, but “ **is not likely to adversely affect**” federally protected species or critical habitat
- May affect, and “**is likely to adversely affect**” federally protected species or critical habitat.

Step 4: Making a “May Affect Not Likely to Adversely Affect” Determination

- “Not Likely to Adversely Affect” Determination can be made only when:
 - Effects are expected to be discountable, insignificant, or completely beneficial.
- Discountable effects are extremely unlikely to occur.
- Insignificant effects relate to the size of the impact and should never involve “take.”
- **Beneficial** effects are contemporaneous positive effects without any adverse effects.
- If RE makes an incorrect determination of “No Effect”, is liable for outcome.

Consultation with “the Services” for “Not Likely to Adversely Affect” Determination

- RE submits findings, determination and all documentation to Services with request for **informal consultation**.
- Services must concur with **“Not Likely to Adversely Affect”** determination.
- Documentation must be included in ERR



Kemp's Ridley Sea Turtle
Lepidochelys kempii
Status: Endangered
TX, LA

Step: 5 Making a “Is Likely to Adversely Affect” Determination

- For any adverse effects to listed species
- If incidental take is anticipated to occur as a result of the proposed action
- An **"is likely to adversely affect"** determination requires RE to initiate formal section 7 consultation.
- Biological Assessment is submitted to Services with request for **formal consultation**.



Texas Prairie Dawn
Hymenoxys texana
Status: Endangered
TX

Formal Consultations Result in Biological Opinions



Red Cockaded Woodpecker

Picoides borealis

Status: Endangered

TX, LA, OK, AR

- Services will determine whether an action is likely to jeopardize a listed species or adversely modify their critical habitats.
- Provides reasonable and prudent measures to minimize impacts.
- May provide reasonable and prudent alternatives to the proposed project.
- Incidental Take Permit-- Makes exceptions for “incidental take” of listed species (otherwise illegal).

Options for Responding to a Jeopardy Opinion

- Reject Project.
- Adopt reasonable and prudent measures or reasonable and prudent alternatives as recommended by Services.
- Modify proposed action or develop a new alternative and continue formal consultation with Services
- RE must notify Services of final decision.



Gray Wolf
Canis lupus

Status: Endangered
TX, NM



DOCUMENTATION FOR THE ERR

Example Section 7 Endangered Species Act --Species Evaluation Conclusions Table (USFWS Oklahoma)

Project Name:

Species/Resource Name	Conclusion	ESA/Eagle Act Determination	Notes/Documentation
Interior Least Tern	Potential habitat present, species not present	May affect, not likely to adversely affect	Construction will take place in February, outside of nesting/migration season (mid-May to late August) for the interior least tern
Whooping Crane	Species not present, no potential habitat present	No effect	Habitat assessment indicated no potential habitat present
Arkansas River Shiner	Species not present, no potential habitat present	No effect	Project area in Red River drainage which does not contain Arkansas River shiners
Critical Habitat	No critical habitat present	No effect	
Lesser Prairie chicken (a candidate species)	Species present	Coordination with USFWS necessary	
American burying beetle	Species present	May affect, not likely to adversely affect	Recent surveys by qualified surveyors found this species within project area; avoidance measures planned

For “No Effect” determination:

- Mark box “A” on Statutory Checklist for Endangered Species
- Supporting documentation includes RE memorandum to file discussing how a “No Effect” determination was made.



Texas Poppy-
mallow
Callirhoe
scabriuscula
Status: Endangered
TX

For “Not Likely To Adversely Affect” Documentation for the ERR

- Mark box “B” on Statutory Checklist for Endangered Species and include conditions/mitigation measures in 7015.15 Project Description
- Supporting documentation includes
 - Informal communication
 - Habitat maps with project location
 - Special Studies
 - Letter of concurrence from Services.
 - Written documentation of RE decision.

For “Likely To Adversely Affect” Documentation for the ERR

- Mark box “B” on Statutory Checklist for Endangered Species and include conditions/mitigation measures in 7015.15 Project Description
- Supporting documentation includes:
 - Informal communication
 - Habitat maps with project location
 - Special Studies
 - Formal correspondence
 - Biological Opinion from Services
 - Written documentation of RE decision.

Questions?

Gopher Tortoise
Gopherus polyphemus
Status: Threatened
LA



Chiricahua Leopard Frog
Rana chiricahuensis
Status: Threatened
NM



American Burying Beetle
Nicrophorus americanus
Status: Endangered
TX, OK, AR

